

PATENT

Atty Docket No.: 200209304-1

App. Ser. No.: 10/666,620

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks. Claims 1-25 are pending, of which claims 1, 10, 15, and 22 are independent.

Claim 14 was objected because of minor informalities.

Claims 1-6 and 8-25 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Tsuchiya et al. (4,823,111).

Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Tsuchiya et al. in view of Kuznetsov (6,021,406).

Drawings

The Examiner's indication of the acceptability of the drawings as filed on September 19, 2003 is noted with appreciation.

Information Disclosure Statement (IDS)

The Examiner's indication of a complete review of the IDS of record is noted with appreciation.

Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal

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Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221

USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection

under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1-6 and 8-25 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Tsuchiya et al. (4,823,111).

Independent Claims 1, 10, 15, and 22

The present invention is concerned with, among other things, selecting a physically-closest node in a physical network for routing data instead of randomly selecting a node so that network traffic and latency may be reduced in the physical network (see, e.g., paragraph [0024]). Thus, claim 1 recites, *inter alia*, "the proximity information includes locations of nodes *physically close in the physical network*." (Emphasis added). Likewise, claims 10, 15, and 22 recite, *inter alia*, a map that includes or comprises "locations of nodes *physically close in the physical network*." (Emphasis added).

The Office Action generally cited to Tsuchiya et al., col. 7, line 63 through col. 8, line 34, and col. 9, lines 3-55 to anticipate the above claimed features. However, a review of these cited sections in Tsuchiya et al. does not yield any actual

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discussion or concern about any underlying physical network. Indeed, as described and illustrated in Tsuchiya et al., the various network maps of landmark hierarchy are *logical* maps of physical networks, and the “proximity information” or “map” information that is allegedly disclosed in Tsuchiya et al. is concerned with locations of nodes that are *logically close* or within a certain logical radius in the *logical* landmark-hierarchy network. As understood in the art, nodes that are logically close in a logical network may not actually be close in physical distance in an actual, physical network. Thus, at best, Tsuchiya et al. shows the use of a logical landmark-hierarchy network without any concern for the underlying physical network or the physical proximity of the nodes in such a physical network as claimed.

Because Tsuchiya et al. fails to anticipate each and every element as arranged in independent claims 1, 10, 15, and 22, it is respectfully submitted that these claims and their dependent claims are allowable over the references of record. Accordingly, withdrawal of the rejection of claims 1-25 and their allowance are respectfully requested.

Claim Rejections Under 35 U.S.C. §103(a)

Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Tsuchiya et al. in view of Kuznetsov (6,021,406).

It is respectfully submitted that claim 7 is not anticipated by Tsuchiya et al. for the reasons set forth above. Furthermore, the Office Action did not rely upon Kuznetsov to make up for the deficiencies in Tsuchiya et al. with regard to independent claims 1, 10, 15, and 22. Indeed, Kuznetsov provides no discussion that concerns with nodes that are physically close

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in a physical network as claimed because Kuznetsov is more concerned with storing and retrieving data at different *logical* nodes in a database. Thus, as a dependent claim that depends on claim 1, claim 7 is also allowable over the references of record for at least the reasons set forth above. Accordingly, withdrawal of the rejection of claim 7 is respectfully requested.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: January 29, 2008

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